In this case the appellant had been convicted of house-breaking by night. It appeared that he entered the house to persuade a girl to slip out and hold a *tete-a-tete* with him.

Held: the act of the appellant in this case was not an offence within the meaning of section 441 of the Penal Code and therefore the conviction of the appellant must be set aside.

Case referred to:—

(1) *Abbass* v. *Tomby* (1881), 3 Kyshe 131.

MAGISTRATE'S CRIMINAL APPEAL.

Mustapha bin Hussain for the appellant.

Haji Suhaimi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim J.: The appellant was convicted by the learned magistrate at Nibong Tebal on a charge of house-breaking by night and sentenced to a term of 4 months imprisonment.

From the first information report and the evidence of the complainant, the motive for the entry was to persuade the girl to slip out and hold a *tete-a-tete*. The manner of the entry and the hour were improper and indiscreet. Instead of coming out with the truth, the appellant tried to lie his way out and to induce his friends to support his *alibi* by perjured evidence. I see he has now abandoned his appeal against conviction and has only appealed against sentence. His line of defence in the court below does not dispose me to show him any leniency.

I have however to consider whether the offence as charged has been committed. House-breaking is defined as house-trespass if entry is effected in any of the six ways set out in section 445 of the Penal Code or if being in the house for the purpose of committing an offence or having committed an offence therein egress is effected in any such ways. House-trespass is defined as criminal trespass in any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property. This takes us to the definition of criminal trespass in section 441 which is entry upon property with intent to commit an offence or to intimidate, insult or annoy any person in possession thereof or having lawfully entered thereon unlawfully remaining there with the like intent. I would refer to the case of *Abbas* v. *Tomby* [1] where it was held that the act of a person in going into the house of another with intent to have criminal intercourse with the latter's wife, although necessarily resulting in annoyance or as an insult to the latter is not an offence within sections 441 and 442 of the Penal Code.

I consider that this case is not distinguishable as the intent for the entry into the house by the appellant was not for any of the purposes set out in section 441.

I therefore set aside the conviction and sentence.

Conviction and sentence set aside.

ABAS v. HAJJAH SAELAN

[A.C.J. (Ismail Khan J.) December 31, 1966]

[Seremban — Civil Appeal No. 6 of 1961]

Malay Customary Law — Adat Perpateh — Whether property harta pembawa or harta charian laki-bini — Proof of custom.

This was an appeal against a distribution order made by the Collector of Land Revenue, Kuala Pilah, in the estate of one Yusof bin Jadi (deceased). The collector held that the property was *charian laki-bini* and relying on a statement in *Taylor's* Customary Law of Rembau he held that the respondent, the widow of the deceased, was entitled to the whole of the property. The appellant, a son of the deceased by another wife since deceased, appealed against the decision.

Held: (1) the collector should have ascertained the date of the marriage of the respondent to the deceased in order to decide whether the property was a *harta pembawa* or *charian laki-bini;*

(2) the custom may differ from State to State and district to district and the collector should have ascertained what was the custom applying in Kuala Pilah, instead of applying the custom in Rembau;

(3) there should therefore be an order remitting the case to be heard before another collector.

CIVIL APPEAL.

R. Muthu-Ramalingam for the appellant.

Edgar Joseph Jr. for the respondent.

Ismail Khan J.: This is an appeal against the distribution order made by the Collector of Land Revenue dated 24th November, 1960, in the estate of one Yusof bin Jadi, deceased, comprising two pieces of land E 2006 and 2723 Juasseh, Kuala Pilah.

The deceased left him surviving his widow Hajjah Saelan binte Owit and the appellant Abas bin Yusof, a son by another wife since deceased.

At the hearing of the application for distribution, it was admitted by the appellant that the land E 2723 was acquired by the deceased after his marriage to the respondent. He claimed however, that the other piece of land E 2006 is a *pembawa,* that is, the property brought by the deceased to the tribe of his wife on marriage. The respondent alleged that it is *charian laki-bini,* that is, property acquired during coverture. It is necessary to establish the category of the property as on this depends the question whether it reverts to the beneficiaries and is to be distributed according to the rules of ancestral property in the case of the *pembawa,* or is transmitted to the widow and children of the the marriage if it is *charian laki-bini.* (See E. N. *Taylor* on Customary Law of Rembau — p. 15).

According to the collector, the land was

acquired in 1925 from "the documentary evidence". He apparently accepted the evidence of the respondent that she was married to the deceased for forty years. It would be desirable if other evidence had been called to prove this fact, for example, her marriage certificate. Her identity card may give some indication as to her age from which an inference could be drawn as to the probability of what was alleged. Evidence of relatives and friends would have been helpful on this point. What is of importance is when the marriage was contracted. If it was after the alienation of the property to the deceased, it could not be *charian laki-bini* and may well support the appellant's claim that it is a *pembawa*. The collector having found that it was *charian laki-bini* decided that the respondent was entitled to the whole of the property. He based his decision on a statement in *Taylor's* Customary Law of Rembau, page 26:— "On the death of a man in wedlock the rule is *mati laki tinggal ka-bini*. Since he died 'in his wife's hands' she alone is responsible for his funeral and his *waris* can recover nothing but the *pembawa*". While this proposition may be true of Rembau, it does not follow that it is of general application. The *adat* may differ from state to state and from district to district. Indeed, in his Customary Law of Rembau, the author says that "the people of Rembau follow a matriarchal system . . . differing in some respects from the cognate customs practised in the neighbouring districts of Kuala Pilah and Naning." He goes on to say: "In the absence of any sufficient work of reference they (the collectors) were compelled in disputed cases to adopt the practice of calling expert witnesses, usually the tribal chiefs (*lembagas*), to give evidence of the custom". It is true that those experts might differ, but as the learned author said, "the collectors . . . had they gone more deeply into the matter would have found that many apparently conflicting statements can be reconciled".

In the present case, in my view, the collector erred in treating the custom of Rembau as applicable to Kuala Pilah. I would therefore allow the appeal and remit the case to the collector for it to be tried before another collector with the following directions, namely, (1) to find out if the property E 2006 is *charian laki-bini* or a *pembawa*. On this point, the evidence of the date of the marriage of the respondent to the deceased is important. In the absence of documentary evidence, other evidence bearing on the point should be considered; (2) once the category of the property is ascertained, to find out the *adat* in respect thereof, and for that purpose to require the attendance of persons such as the *lembagas* who may give evidence in the matter.

At the re-hearing, section 12(4) of the Small Estates (Distribution) Ordinance, 1955, and Part III in respect of the special provisions relating to Negri Sembilan should be borne in mind.

Finally, I may add that as counsel have been engaged in this appeal, and if their assistance is needed by the parties, they may be allowed to attend at the re-hearing. This is however subject to the consent of the collector who has exclusive jurisdiction in the matter.

Appeal allowed.
Case remitted for re-trial.

Solicitors: *R. Muthu-Ramalingam; Joseph & Son.*

PUBLIC PROSECUTOR v. LEE YOKE KAI

[A.Cr.J. (MacIntyre J.) January 3, 1967]

[Ipoh — Criminal Appeal No. 104 of 1965]

Gaming — Bookmaker — Proof that document is meant for betting — Evidence of police officer — Betting Ordinance, 1952, ss. 6(3)(a), 8(1) and 14A.

This was an appeal against the acquittal of the respondent on a charge of acting as a bookmaker, an offence under the Betting Ordinance, 1953. The learned magistrate acquitted the respondent at the end of the case for the prosecution. The public prosecutor appealed on the ground that the learned magistrate had erred in law and in fact in not calling for the defence.

Held: as the prosecution had in this case called evidence to prove that the document in question was related to bookmaking, the presumption under the Ordinance arose and the respondent should have been called upon for his defence.

Cases referred to:—

(1) *Tan Tuck Lock* v. *R.* [1953] M.L.J. 60.

(2) *Loh Teck Chong* v. *Public Prosecutor* [1966] 1 M.L.J. 7 at p. 8.

MAGISTRATE'S CRIMINAL APPEAL.

Abdul Hamid bin Omar (Legal Adviser, Perak) for the appellant.

Alexander Y. L. Lee for the respondent.

Cur. Adv. Vult.

MacIntyre J. The respondent was charged before the learned magistrate at Ipoh with having acted as a bookmaker at the Perak Turf Club Race Course on the 7th of June 1964, an offence punishable under section 6(3)(a) of the Betting Ordinance No. 47 of 1953. At the end of the case for the prosecution, the learned magistrate acquitted and discharged the respondent. Against that order, the public prosecutor now appeals on the grounds that the learned magistrate had erred in law and in fact in not calling for the defence.

The facts of the case are simple. The respondent was seen by two security officers between 3.15 p.m. and 5 p.m. during the Ipoh races on June 7, 1964, making certain entries with a pen on a Chinese newspaper from time to time on receipt of information or instruction whispered to him by 3 or 4 persons. At the end of the 6th